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Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

ROBERT BASKIN,

Petitioner,

v.

RICHARD CLARK,
Superintendent, and INDIANA ATTORNEY GENERAL,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF IN OPPOSITION TO CROSS-PETITION FOR A WRIT OF CERTIORARI

Allen Shoenberger*
One East Pearson St.
Chicago, Illinois 60611
(312) 915-7141

Counsel for Petitioner

*Counsel of Record

10 pp

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

SUMMARY OF THE ARGUMENT.....4

REASONS FOR DENYING THE WRIT.....4

CONCLUSION.....7

TABLE OF AUTHORITIES

Cases: Pages:

Baskin v. Clark, 956 F.2d 142 (7th Cir. 992).....3

Brecht v. Abrahamson, 944 F.2d 1363
(7th Cir. 1991) *cert. granted* 6/8/92 (No. 91-7358).....4, 5, 6

Burton v. United States, 196 U.S. 283, 25 S.Ct. 243, (1905)....6

City of Lakewood v. Plain Dealer Pub. Co. 486 U.S. 750 (1988)..5

Leroy v. Great Western United Corp., 443 U.S. 173, (1979).....6

Stone v. Powell, 428 U.S. 465 (1976).....4

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Petitioner, Robert Baskin, pursuant to Rule 15 of the Supreme Court Rules, respectfully opposes the conditional cross-petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit in the case of *Robert Baskin v. Richard Clark, et al.*, 956 F.2d 142 (7th Cir. 1992).

SUMMARY OF THE ARGUMENT

This Court should not decide the questions presented because the lower courts, in this case, did not base their decisions on either of the two issues raised in the cross-petition.

REASONS WHY THE CROSS-PETITION SHOULD BE DENIED

Respondent's cross-petition for certiorari should be denied because it does not raise issues which were the basis of the lower court decisions in this case; therefore, consideration of the Respondent's questions is not necessary, or relevant, to a decision regarding the constitutional error which occurred in this case. Respondent's questions do not meet the criteria for review set forth in Supreme Court Rule 10; clear evidence of their extraneous nature.

The cross-petition for certiorari presents these two questions: whether a Stone v. Powell, 428 U.S. 465 (1976), type analysis should bar habeas review of Miranda claims, and whether the Seventh Circuit's decision in Brecht v. Abrahamson, 944 F.2d 1363 (7th Cir. 1991) *cert. granted* 6/8/92 (No. 91-7358), should be applied to this case. However, neither the United States District Court for the Northern District of Indiana, nor the United States Court of Appeals for the Seventh Circuit, grounded its decisions on either of Respondent's two issues.

Supreme Court Rule 10 sets forth, in pertinent part, the following criteria to be considered in determining whether a writ of certiorari should issue:

> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
> (b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a United States court of appeals.
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Each provision of Rule 10 expressly refers to issues raised by a lower court decision. In this case, no lower court held that Miranda claims are not cognizable on habeas review, nor did a court hold that the error was harmless under Brecht v. Abrahamson, 944 F.2d 1363 (7th Cir. 1991) *cert. granted* 6/8/92 (No. 91-7358). Therefore, under Rule 10, the cross-petition should be denied.

In suggesting that the Court only review issues raised by lower court decision, Rule 10 is essentially upholding the case-or-controversy requirement of Article III of the United States Constitution. The Court generally does not decide cases on grounds broader or different than those necessary to dispose of the case under submission; it thereby avoids unnecessary confrontation with Congress or state or local legislatures. City

of Lakewood v. Plain Dealer Pub. Co. 486 U.S. 750, 776, 108 S.Ct. 2138, n.4 (1988)(White J., dissenting)

Avoiding unnecessary decisions has long been a basic tenant guiding Supreme Court review. "It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case." Burton v. United States, 196 U.S. 283, 300, 25 S.Ct. 243, 245 (1905). In this case, the questions presented in the conditional Cross-Petition are unrelated to the Constitutional error asserted in the original Petition for Certiorari. Additionally, the lower courts did not base their decisions on grounds raised by Respondent's questions, therefore, consideration of the Cross-Petition questions are unnecessary to decide this case, or to address the question raised in the petition for certiorari.

Furthermore, Respondent's first question seeks to change existing Federal and Constitutional law, barring Miranda violations from being raised in a habeas corpus petition. As expressed in Leroy v. Great Western United Corp., 443 U.S. 173, 181, 99 S.Ct. 2710 (1979), the Court avoids deciding unnecessary novel constitutional questions when it can decide the case on other grounds. In this case, the Court should not make new law when a clarification of the existing law would suffice.

Finally, this Court granted certiorari on June 6, 1992, in Brecht v. Abrahamson, No. 91-7358, and will be considering Respondent's second question in that case. Therefore, there is no need to consider that question in this case.

CONCLUSION

The cross-petition for a writ of certiorari should be denied.

Respectfully Submitted,

By

Allen E. Shoenberger
Loyola University of Chicago
School of Law
One East Pearson Street
Chicago, Illinois 60611
(312) 915-7141
Court Appointed
Counsel for Petitioner